



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1994

Mr. Michael G. Penkwitz  
Assistant City Attorney  
City of Temple  
Municipal Building  
Temple, Texas 76501

OR94-042

Dear Mr. Penkwitz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 22748.

The City of Temple (the "city") has received an open records request for a copy of a police incident report involving a "reported suicide." The city submitted the requested information for our review and contends that portions of the report are precluded from disclosure under section 552.101 (formerly 3(a)(1)) of the act and common-law privacy concerns of the family.

Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision Nos. 579 at 2, 562 at 9, 561 at 5, 554 at 3 (1990); *see also* *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

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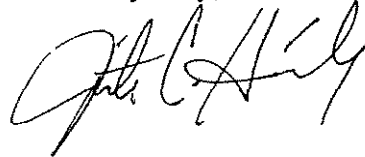
<sup>1</sup>We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In Open Records Decision No. 432 (1985), this office ruled that the family of a deceased person does not have the right to maintain an action for invasion of privacy on behalf of the decedent since that right is personal and cannot be transferred. *Id.*; see also Attorney General Opinion JM-229 (1984). The privacy rights of the decedent are no longer viable. The city also expresses its concern that the report contains information about the "private affairs of the family of the deceased." Upon a review of the information, we note that none of the information submitted contains the type of information this office has held to be highly intimate or embarrassing under the *Industrial Foundation* analysis.

The pedestrian accident at issue occurred on a public highway, and several persons witnessed the incident. Some of the submitted information contains details and statements of the witnesses and persons involved in the incident. Since it occurred on a public roadway, the public has a legitimate right to know the details of the incident; therefore, the information is not exempted under common-law privacy. See Open Records Decision No. 478 (1987).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Juanita C. Hernandez  
Special Assistant Attorney General  
Open Government Section

JCH/KKO/rho

Ref.: ID# 22748

Enclosures: Submitted documents

cc: Mr. William J. Novak  
Claims Representative  
Farm Bureau Insurance  
P.O. Box 338  
Temple, Texas 76503  
(w/o enclosures)